THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :11.05.2007

+ **WP(C) No.10423/2006**

PANKAJ DAHIYA ...Petitioner

- versus -

UNIVERSITY OF DELHI & ANOTHER ...Respondents

with

+ **WP(C) No.6897/2006**

PANKAJ DAHIYA ...Petitioner

- versus -

UNIVERSITY OF DELHI & OTHERS ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr R.K. Saini
For the Respondents : Mr M.J.S. Rupal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. These two writ petitions are taken up together as they arise out of the same sequence of events. The petitioner took admission in the Delhi College of Engineering for the four-year degree course of Bachelor of Engineering (Mechanical) in July, 2000. The four-year degree course is spread over 8 semesters. According to the petitioner, he completed the course in May, 2004 and sat for his 8th semester examination. The mark-sheet which is annexed at page 10 of the paper book in WP(C) 6897/2006 indicates that the petitioner qualified in all the papers except the theory paper in Industrial Engineering (ME 411) and the practical papers for Elective I (Automotive Engineering) and Elective II (Combustion and Engine Emissions). The subject codes for Elective I and Elective II in the case of the petitioner were 428 and 432.

2. Taking into account all the examinations in which the petitioner had appeared, including the 8th Semester Examination, the petitioner obtained a total of 226 credits. For the purposes of award of the degree, the petitioner would require 228 credits. In other words, there was a shortfall of two credits. The practical for the Elective I and Elective II combined was of two credits. Therefore, the petitioner decided to re-appear in the practicals for his Elective I and Elective II which he had failed to clear in the 8th Semester.

3. Since the petitioner had become an ex-student, he made an application for enrollment as an ex-student on 11.03.2005 and filled in the form for the examination which was to be held in April, 2005. However, in the form, the petitioner gave the wrong subject code of 416 and mentioned the subject as practical in Automobile Engineering. The subject code 416 pertains to the theory paper in Combustion and Engine Emissions which the petitioner had already cleared in his 8th Semester.

4. On 29.04.2005, according to the petitioner, he appeared in the Practical for Automobile Engineering course and he was marked by the examiners. The results of all the examinations held in April, 2005 were declared in July, 2005, but the petitioner was shown as absent in Paper Code 416. Mr Saini, the learned counsel appearing on behalf of the petitioner, submitted that this was correct because the petitioner never appeared in Paper Code 416. However, although he had wrongly filled the Code of 416 in the examination form, the petitioner had appeared for the practical examinations on 29.04.2005 for Automotive Engineering, which, according to Mr Saini, was the combined practical for course codes 428 and 432.

5. Being aggrieved by the fact that the result indicated that the petitioner was absent, he moved an application for removal of the discrepancy

in the result. Apparently, that application, which was in the prescribed proforma, was verified and found to be correct and endorsed by the Principal. On the same day, i.e., on 29.04.2005, the petitioner also moved an application requesting for rectifying the Code of the subject. Since no response had been received by the petitioner, he made another request on 23.11.2005 to the Dean and a further request was made on 16.01.2006 to the Registrar followed by another request on 23.02.2006 made to the Dean. Since none of these requests were heeded to and no response was received by the petitioner, he filed the writ petition WP(C) 6897/2006 wherein essentially he claimed rectification of discrepancy in results and declaration of the same.

6. During the pendency of the writ petition, various proceedings took place and the petitioner also filed an LPA (Letters Patent Appeal) as well as an interim application in the LPA, namely, CM No.7420/2006 which was disposed of by a Division Bench of this court on 16.06.2006 and the same was to the effect that the main grievance of the petitioner was with regard to the memorandum of 06.06.2006 and unless that is sorted out, no relief could be granted to the petitioner with regard to the declaration of results. At this juncture, it is relevant to note that during the pendency of the aforesaid writ petition, a show cause notice had been issued to the petitioner on 01.06.2006 intending to take disciplinary action against the petitioner for his alleged involvement in criminal activities which were being investigated by the CBI

pertaining to the examinations held in April, 2005. This show cause notice was purportedly issued on the basis of a charge-sheet which had been filed by the CBI on 16.01.2006. Mr Saini pointed out that the petitioner sent a reply on 04.06.2006 by registered post. He also referred to the delivery certificate given by the Postal Department which indicated that the letter dated 04.06.2006 containing his reply was delivered on 05.06.2006 at Malkaganj Post Office. Although, Mr Rupal, the learned counsel appearing for the University of Delhi, submitted that no reply was received by the University.

7. Thereafter, on 06.06.2006, the memorandum which is impugned in WP(C) No.10423/2006 came to be passed, as a result of which the petitioner's results in all the examinations were cancelled and he was expelled, purportedly invoking the powers under clause 4 (a) and (f) of Ordinance XV-B of the Delhi University. The petitioner, being aggrieved by this memorandum of 06.06.2006, filed the second writ petition [WP(C) 10423/2006]. The challenge to the action of the University was on the ground that the disciplinary action is permissible only against a student and not an ex-student. It was contended that the offences allegedly committed were in April, 2005 and the petitioner was then an ex-student. It was also contended by Mr Saini that the correction and declaration of the result, if allowed, would relate back to July, 2005 and, therefore, no action could be taken in June, 2006. It was

also submitted by him that all the delay was on the part of the University and they cannot be permitted to take advantage of their own wrong.

8. Mr Rupal submitted that the action has been taken under Ordinance XV-B and in particular clauses 3 and 4 thereof. He submits that the interpretation that ought to be given to the provisions should not be stretched to such an extent that ex-students are taken out of the purview of any disciplinary action on the part of the University. He submitted that there was a distinction between an ex-student and an alumnus. While an ex-student continued to remain with the University, the alumnus would have taken his degree or diploma and left the University. Till a final degree is awarded, the student or ex-student remains within the purview of discipline of the University.

9. Considering the arguments advanced by the counsel for the parties, the first thing that has to be seen is whether the memorandum dated 06.06.2006 can be sustained. It is the petitioner's contention that the reply dated 04.06.2006 was sent by registered post and was delivered on 05.06.2006. This was admittedly not considered by the disciplinary committee because, according to the learned counsel for the University, no such reply was received by them. The fact remains that the petitioner had sent the reply by registered post on 04.06.2006 and the delivery report also shows that the

same was delivered on 05.06.2006. The office of delivery was indicated as Malkaganj Post Office which is the post office which covers the Delhi University area. Therefore, it cannot be said that the petitioner had not replied to the show cause notice. The same has not been considered by the disciplinary committee. It is true that the petitioner did not appear for the hearing granted to him on 05.06.2006, but at the same time, it is also true that the reply submitted by the petitioner was not considered at all.

10. In these circumstances, I feel that it would be appropriate if the impugned order dated 06.06.2006 is set aside and the petitioner is given another opportunity of filing a reply to the show cause notice within two weeks and the disciplinary committee shall also afford an opportunity of hearing to the petitioner and then pass a reasoned order in accordance with law.

11. Insofar as the question of rectification and declaration of the result of the petitioner with regard to the practical examination which he undertook on 29.04.2005 is concerned, I direct that the Dean (Faculty of Technology) / Dean (Examinations) shall consider the same and shall pass a reasoned order after the decision of the disciplinary committee. The disciplinary committee shall conclude its proceedings within one month of the receipt of the reply from the petitioner as indicated above. The decisions, as directed above, taken

by the disciplinary committee as well as the Dean shall be communicated to the petitioner.

12. These writ petitions stand disposed of accordingly.

BADAR DURREZ AHMED
(JUDGE)

May 11, 2007
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